

EMERGENCY SCENARIOS INVOLVING LIABILITY

A GUIDE FOR VOLUNTEERS



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Disclaimer: These scenarios represent hypothetical situations created to address a range of legal issues that could potentially arise. This information is designed to help readers understand the legal dynamics of volunteer liability. It should not be viewed as legal advice since every incident has its own unique circumstances.

Scenario #1

Last night, a tornado touched down in Prairie, Wisconsin and left homes damaged, streets clogged, and power lines down. The next morning, volunteers and emergency management workers from Sun County gathered to remove the debris. Volunteers Jill, Dave, and Craig were all injured when the roof they were working on collapsed; they were taken to the hospital. Bob was not on the roof, but Craig fell on him. The Sun County Emergency Management unit was in charge of signing up volunteers at the site where Jill, Dave, Craig, and Bob were at. Bob and Jill signed their names on the list and Jill also signed Dave's name on the list but she incorrectly spelled Dave's last name Shoemaker instead of Schumacher. Craig did not sign up on the list. The City of Prairie has a population of 20,000 and Sun County has a population of 500,000.

1) Who is responsible for covering workers' compensation costs of the injured volunteers?

The emergency management unit that sponsors the volunteers is responsible for a certain amount of costs as determined by its population. The emergency management government entity that signs up the volunteers in writing is the sponsoring unit, which means that Sun County is the sponsoring unit in this example. Under Wis. Stat. § 166.03 (8) (f), if the total liability during a calendar year/emergency event exceeds \$1 per capita of the sponsor's population, the state shall reimburse the sponsor for the excess amount.

According to the Wisconsin Statutes, Sun County would be responsible for the first \$500,000 since their population is 500,000. If the total workers' compensation costs for all of the injured volunteers were under \$500,000, then Sun County would cover all of the costs. If the total workers' compensation costs were over \$500,000, then Sun County would be responsible for the costs up to \$500,000 and the State of Wisconsin would reimburse Sun County for the remaining excess amount. This means if the total workers' compensation costs are \$1.1 million; Sun County would initially pay \$1.1 million and then the State of Wisconsin would reimburse Sun County for \$600,000, which means Sun County would ultimately only be responsible for \$500,000. This example assumes that the volunteers were signed up in writing and acting in a reasonable manner.

2) What if the City of Prairie was the sponsoring unit instead of Sun County?

Since the City of Prairie has a population of 20,000, Prairie would be responsible for \$20,000. If the total workers' compensation costs for all of the injured volunteers were under \$20,000, then Prairie would cover all of the costs. If the total workers' compensation costs were over \$20,000, then Prairie would be responsible for the costs up to \$20,000 and the State of Wisconsin would reimburse Prairie for the remaining excess amount. This means if the total workers' compensation costs are \$1 million; the City of Prairie would initially pay \$1 million and then the State of Wisconsin would reimburse the City of Prairie for \$980,000, which means Prairie would only be responsible for \$20,000. This example assumes that the volunteers were signed up in writing and acting in a reasonable manner.

3) *How long does it usually take to receive state reimbursement?*

State reimbursement generally takes 3-4 months after submittal for reimbursement. The appropriation covering reimbursement has minimal funding so a section 13.10 request must be made to the Joint Committee on Finance, which holds quarterly meetings. The State would not need to wait until all costs were finalized to reimburse. If a long-term injury occurred, the State would make incremental reimbursements. If all injuries were minimal, the State would wait for the final costs.

4) *Will Sun County have to continue paying \$500,000 each successive year if their volunteers continue to need workers' compensation?*

No. Once Sun County pays \$500,000, the State of Wisconsin will reimburse the rest of the volunteer costs arising out of that same incident.

5) *Who is responsible for covering Jill's hospital costs?*

Jill correctly signed her name on the volunteer sign-up list. Since she signed her name on the list, Sun County will cover her hospital costs (subject to the framework mentioned above).

6) *Who is responsible for Dave's hospital costs?*

Dave asked Jill to sign his name on the volunteer list but Jill did not spell his last name correctly. Hopefully, the volunteer list used at the Prairie site also requires volunteers to write their date of birth and permanent mailing addresses. If that were the case, then Sun County could verify Dave's identity. Once Dave's identity was verified, the hospital costs would be paid by Sun County (subject to the framework mentioned above). If Dave's address and date of birth were not on the sign-in sheet, it is possible that Sun County may not cover Dave's hospital costs.

7) *Who is responsible for Craig's hospital costs?*

Craig did not sign up on the volunteer list. Craig will not be covered by Sun County. Craig will have to cover his own hospital costs.

8) *If Bob discovers that he was injured a few days later, who is responsible for his hospital costs?*

Since Bob signed up on the volunteer list, Sun County is responsible for his costs (subject to the framework mentioned above). However, if he failed to report the injury to Sun County within 24 hours of the injury or within 24 hours of the discovery of the injury, then Sun County and/or Wisconsin (depending on if the costs exceed \$500,000) might refuse to cover the hospital expenses. Volunteers should promptly report incidents that occur so that they will be covered.

Scenario #2

Theresa is in charge of a volunteer organization in Wisconsin. Her organization receives a request from Texas to provide volunteers to help with the flooding. She sends out a group of registered volunteers. In Texas, Ted and Caroline, two of the volunteers from her organization, are accused of fraud. Ted and Caroline have been going door-to-door in an elderly neighborhood, convincing elderly residents to exchange valuable jewelry for debris removal services. Theresa is sad to hear about the news and is worried her organization will be held liable for the actions of these two renegade volunteers. Theresa completed a background check on Ted and nothing came up. Theresa also submitted a background check for Caroline but she did not hear back before she sent Caroline to Texas; the background check for Caroline shows that she had been convicted of stealing ten years ago. Even worse, Tommy, another volunteer, is injured by falling debris, and has hospital costs. Theresa's volunteer organization does not have liability insurance.

1) Could Theresa's volunteer organization be held liable for Ted's actions?

Theresa's organization could be held liable for Ted's actions. However, the organization acted in a reasonable manner when it did a background check on Ted, which reduces their chance of being held liable.

2) Could Theresa's volunteer organization be held liable for Caroline's actions?

Theresa's organization is more likely to be held liable for Caroline as opposed to Ted. The organization did not wait for Caroline's background check to come back before they sent her to Texas. If the organization had waited, they would have seen that Caroline was convicted of stealing ten years ago. The organization's action may not be reasonable under the circumstances.

3) What if Caroline's background check had come back clean and she had not stolen previously?

The organization's chance of being held liable would decrease compared to the situation when the background check showed that Caroline was previously convicted of stealing. However, it may be unreasonable for an organization to send out volunteers before they have received their background checks back.

4) Could Theresa be held personally liable for Ted's or Caroline's actions?

Theresa could not be held personally liable for Ted's or Caroline's actions because she was acting as an employee of the organization, not as a private individual.

5) Should Theresa's organization have had liability insurance?

Many volunteer organizations have liability insurance. High-quality liability insurance will cover workers' compensation claims as well as civil or criminal charges against that organization's volunteers.

6) Should Theresa's organization have done background checks?

Background checks allow organizations to reduce their chance of being held liable in the event that one of their volunteers commits a civil or criminal offense. By using

background checks, volunteer organizations show that they have taken reasonable precautions against volunteers with ulterior motives. At the same time, conducting background checks does not completely eliminate the liability of an organization.

7) What steps can organizations take to help protect against volunteers like Ted and Caroline?

In addition to background checks and liability insurance, there are a few practical steps volunteer organizations can take to prevent situations like this from occurring. First, it is important for a volunteer organization to have trusted, experienced volunteers. Volunteer organizations should carefully supervise new volunteers. Second, volunteer organizations should create buddy groups of two to three volunteers so that volunteers are not working alone. The groups could be divided so that experienced volunteers are working with inexperienced volunteers. Groups will help build competence, teamwork, and accountability. Third, it is important for leaders in the volunteer organization to trust their instincts. If the leaders are uncomfortable with a volunteer, then they should make sure that the volunteer is being closely supervised and that the volunteer is doing activities that are less conducive to criminal activity (for example, Ted and Caroline could have been cleaning up debris in the downtown area instead of going door-to-door in contact with vulnerable persons). Finally, volunteer organizations should only send trusted and experienced volunteers to other states since the organizations are likely to lose some autonomy over their volunteers when they send them across state lines. Ultimately, this will affect the credibility of the organization.

Scenario #3

There has been an explosion at CapCoke, a nine-story business building with 270 employees located in the middle of the City of Bay Green. It appears that the immediate impact zone was the 3rd floor; structural damage is significant. Surrounding buildings had their windows that were directly facing CapCoke blown out, but otherwise it appears that these buildings have suffered no other structural damage. There are 4 confirmed fatalities and numerous injuries; first responders are sending injured victims to a nearby hospital. The cause of the explosion is unknown. One of the surrounding buildings contains apartments, another building contains condominiums, and the rest are businesses. The Mayor of Bay Green is thinking about evacuating the nearby area in case of another explosion or building collapse. The hospital is in the evacuation area as well.

1) Can a Bay Green local official require anyone to evacuate before he or she declares a state of emergency?

A local official from Bay Green can not request anyone to evacuate until he or she declares a state of emergency. By declaring a state of emergency, officials are acknowledging that an event has occurred which requires them to use emergency powers such as evacuation.

2) Can a Bay Green official mandate the surrounding businesses to evacuate their employees under a state of emergency?

The Bay Green Mayor, a local fire chief or a local police chief can request surrounding businesses to evacuate under a state of emergency. The local fire chief and local police chief can only evacuate under certain circumstances. Additionally, if a man-made or natural disaster is more wide-ranging, an authorized county official or the Governor may declare a state of emergency and have the emergency power to evacuate areas.

3) *Can a Bay Green official require the residents in the condominiums to evacuate under a state of emergency?*

In Wisconsin, officials can not order a mandatory evacuation. Owners of condominiums have a constitutional right to remain in their homes. As long as they are capable decision makers, they can choose to remain in their homes even if an evacuation order has been issued.

4) *After declaring a state of emergency, can a Bay Green official require the residents in the apartments to evacuate with approval from the landlord?*

In this situation, it does not make a difference whether the resident lives in an apartment or condominium. In either circumstance, residents can refuse to evacuate as long as they are capable decision makers.

5) *Does that mean that residents have the right to demand they be let into their homes even though an evacuation order has been given?*

With a few exceptions, residents that are in their homes have the right to stay there and can not be forcibly evacuated. However, if residents are on public property, they have no right to demand that they be taken to their private property. A resident that is not on his or her property can be evacuated.

6) *Can a mother refuse to evacuate if she has children who are minors?*

As long as the mother is a competent decision maker, she can choose to stay in her home. However, since children under 18 are not capable decision makers, the local authorities may have the responsibility to evacuate the children.

7) *Can a Bay Green local official require the hospital to evacuate?*

An authorized local official from Bay Green could request the hospital to evacuate. However, depending on the circumstances, it may be better for the hospital to shelter in place. It is important that local hospitals have an evacuation plan so that they will have a way to transport their patients, including the critically injured. Additionally, most hospitals have MOU's with other hospitals so that patients have a designated hospital to go to if one hospital is forced to evacuate.

8) *Who assumes responsibility for spontaneous volunteers?*

Spontaneous volunteers are rarely used in emergency response situations; instead, they are used in long-term recovery operations. Spontaneous volunteers and onlookers should be escorted away from the disaster site so that they are not injured. Spontaneous volunteers assume personal legal responsibility in these situations. Certain laws, such as the Good Samaritan law, may provide minimal protection for spontaneous volunteers, but

these protections may be dismissed by a Court if the Court believes that the volunteer was acting unreasonable by remaining at the scene of the disaster.

9) *Assuming the evacuation occurs and it unexpectedly lasts longer than a few days, can people go back in and get their pets?*

If local officials allow people to go back in to an evacuation zone to get their pets and an explosion happens, the City of Bay Green could be liable. However, if local officials are doing what is reasonable under the circumstances, they reduce their chances of being held liable. Local officials may also consider requiring residents to sign a consent form acknowledging the risks of their actions, but the city may still be held liable if something bad happens. Local officials will have to carefully consider the risks when making the decision whether or not to allow residents to go back and retrieve their pets. In order to avoid facing this tough situation, it is important to tell evacuation personnel to remind evacuees to bring their purse/wallet, prescriptions, and pets with them. Additionally, it is important to make emergency plans for pets in the event of an evacuation since most Red Cross shelters will not allow pets.